

RSA-2421-1989 (O&M)

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2024:PHHC:025020

**106 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

RSA-2421-1989 (O&M)

Date of decision: 22.02.2024

Charan Dass (deceased) through his LRs

....Appellant

Versus

Piara Singh(deceased) through his LRs and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. G.S.Jaswal, Advocate for the appellant

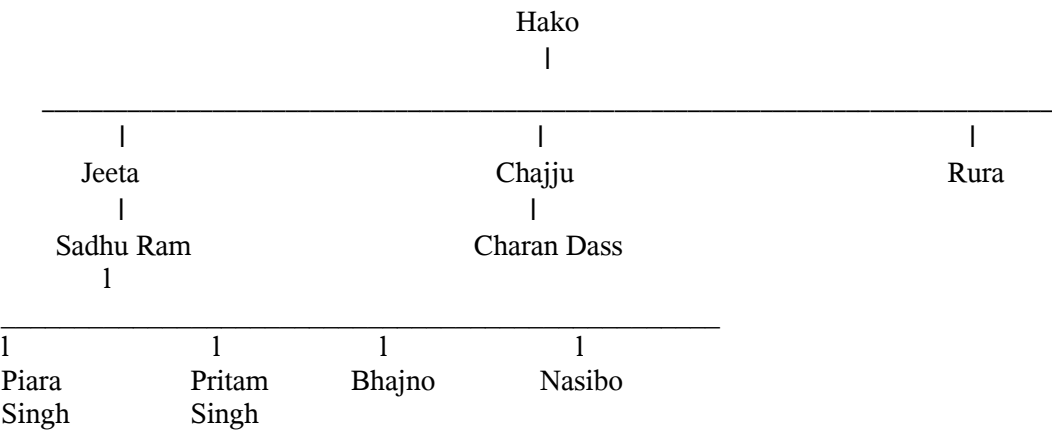
Mr. Prabhjayot Singh Chahal, Advocate for
Mr. G.S.Nagra, Advocate for the respondents

ANIL KSHETARPAL, J (Oral)

1. This Regular Second Appeal has been filed by the defendants to assail the correctness of the decree passed by the First Appellate Court on the basis of the statements of the counsels representing the parties, which have been reduced into writing. In other words, the First Appellate Court has passed a decree on the basis of the consent between the parties. As per Section 96(3) of the Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC'), no appeal against the consent decree is maintainable. At the insistence of the learned counsel representing the appellant, the case has been heard at length.

2. In order to comprehend the issue involved in the present case, some relevant facts, in brief, are required to be noticed.

3. A small pedigree table would help to understand the inter se relationship between the parties, which is drawn as under:-



4. Sh.Rura died issueless in the year 1955. Sh.Charan Dass son of Sh.Chajju filed a suit claiming that late Sh.Rura has left a Will in his favour against Piara Singh, Pritam Singh, Bhajno and Nasibo. In the aforesaid suit, the parties entered into a settlement. It was agreed that Sh.Charan Dass will continue to be owner of the remaining property except 36 kanals 7 marlas comprised in khasra no.83/3 min (2-2), 84 (28 kanal 5 marlas) 507 min (6-0). On the basis of the aforesaid a compromise decree was passed on 06.01.1960. Subsequently, Piara Singh and Pritam Singh filed a suit for the grant of decree of declaration that they are owners of half share of the land measuring 324 kanals 6 marlas alongwith defendant no.2 and 3 i.e Bhajno and Nasibo. The defendant Charan Dass contested the suit claiming that the suit is barred under Section 11 CPC on the basis of the consent decree dated 06.01.1960. The trial court held that the plaintiffs are owners of 1/3rd share alongwith defendants no.2 and 3 namely Bhajno and Nasibo, respectively. The plaintiffs filed the first appeal. During the pendency of the first appeal, the learned counsel representing the parties suffered statement and the following order was passed:-

“2. And these facts have been conceded in the statements of the counsel for the parties which have been reduced into writing.

3. In accordance with the statement of the parties, the instant appeal ought be and is hereby accepted judgment/decreed under appeal are, therefore, set aside. In result a decree for declaration be granted to the effect that the plaintiff's namely Piara Singh and Pritam Singh alongwith the defendant-respondents, namely, Bhajno and Nasibo are the owners in possession as co-sharers to the extent of one-third share in the suit land measuring 324 kanals 6 marlas plus the land measuring 36 kanals 7 marlas comprised in the specific Kh.Nos.83/3 min (2-2) 84 Salem (28.5) and 507 min(6-0).

4. Parties are left to bear their own costs.

5. Decree sheet be prepared.

6. Lower court records be returned.

7. Records be consigned.”

5. It may be noted here that late Sh.Hako was owner of 324 kanals 6 marlas land which was inherited by three brothers in equal shares. In compromise decree dated 06.01.1960, Piara Singh, Pritam Singh, Bhajno and Nasibo apart from 1/3rd share which they inherited from Sh.Sadhu or Sh.Jeeta they also became owner of 36 kanals 7 marlas land. This is the statement given by the learned counsel representing the parties before the First Appellate Court.

6. Learned counsel representing the appellant submits that the execution of the decree dated 06.01.1960 is permissible only within a period of 12 years and therefore, Piara Singh, Pritam Singh, Bhajno and Nasibo cannot claim any property under that decree.

7. This Court has considered the submissions made by the learned counsel representing the parties.

8. This appeal is not arising from an execution petition. Piara Singh and Pritam Singh filed a suit claiming 1/2 share of the property

left behind by Hako their ancestor. The First Appellate Court has recognized that they are owners of 1/3rd share in the land measuring 324 kanals 6 marlas + the land measuring 36 kanals 6 marlas pursuant to the decree dated 06.01.1960. It may be noted here that the correctness of the decree dated 06.01.1960 is not disputed by the learned counsel representing the appellant.

9. Learned counsel representing the appellant further contends that the consent decree dated 06.01.1960 resulted in partition of the property and therefrom the plaintiff cannot claim land measuring 36 kanals 7 marlas.

10. This Court expresses its inability to accept such submission, particularly when the partition of the joint property is a different concept altogether. Recognition of the plaintiff's right over 36 kanals 7 marlas land from the share of late Sh.Rura may be with regard to specific portion of the property does not amount to partition.

11. Keeping in view the aforesaid facts, no ground to interfere is made out.

12. Hence, dismissed.

13. All the pending miscellaneous applications, if any, are also disposed of.

22.02.2024

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE